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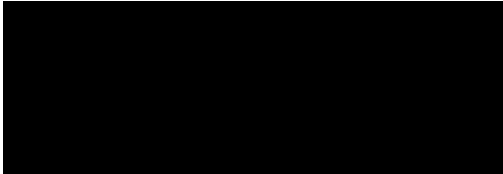
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

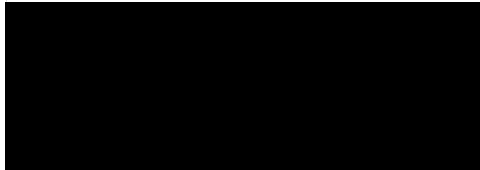


U.S. Citizenship
and Immigration
Services



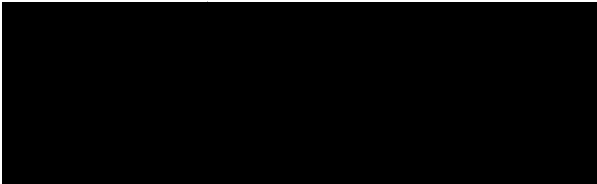
FILE: LIN 02 119 51318 Office: NEBRASKA SERVICE CENTER Date: APR 07 2004

IN RE: Petitioner:
Beneficiary:



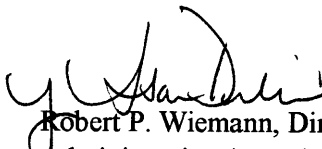
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a machine parts production business that seeks to employ the beneficiary as an assistant import/export manager. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion, counsel submits information from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Counsel claims that the proffered position is not a general manager position or an assistant manager position - it is an assistant import/export manager position. Counsel, in part, states that the AAO found that the proffered position combines the duties of a purchasing manager and a marketing manager, and that the *Handbook* indicates that purchasing and marketing manager positions do not require a bachelor's degree in a specific specialty. According to counsel, contrary to the finding of the AAO, the *Handbook* reveals that for a purchasing manager position, retail and wholesale firms prefer an applicant who possesses a college degree and is familiar with the merchandise sold and with wholesale and retail practices. Furthermore, counsel claims that because marketing manager jobs are coveted, a person essentially needs a degree to obtain a job.

Counsel also states that the AAO's statement - that Citizenship and Immigration Services (CIS) had mistakenly approved similar petitions in the past - is arbitrary and capricious. Counsel, furthermore, states that: (1) the documentary evidence establishes that the degree requirement is an industry standard; and (2) the duties of the proffered position are specialized and complex, requiring a bachelor's degree; and (3) a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. Finally, counsel states that the beneficiary is qualified to perform the duties of the proffered position and that the AAO never requested evidence regarding the beneficiary's qualifications.

Counsel's submission of additional evidence does not satisfy either the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, counsel submits evidence previously submitted and contends that it constitutes new facts because neither the director nor the AAO considered this information. Counsel's statement, however, is not persuasive. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. See 8 C.F.R. § 3.2(c)(1). Here, no evidence in the motion contains new facts that were previously unavailable. Counsel's submitted evidence - information from the *Handbook* about purchasing managers, buyers, and purchasing agents; and advertising, marketing, promotions, public relations, and sales managers - does not constitute new facts because the AAO already considered this evidence in its adjudication of the petition.

The evidence also fails to satisfy the requirements of a motion to reconsider. Counsel does not cite any precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. Neither does counsel establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated January 24, 2003, is affirmed. The petition is denied.